IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

MACA.No. 106 of 2007()

OPMV.783/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANTS/RESPONDENTS 1 & 2:
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1. SATHEESAN, S/O. SHANMUGAN,
VYALITHARA HOUSE, AIMURY, KOOVAPPADY VILLAGE.

2. NARAYANAN SHANMUGAN,
VAYALITHARA HOUSE, AIMURY P.O.,KOOVAPPADY VILLAGE.

BY ADV. SRI.SUNIL CYRIAC
SRI.JOHNY K.MATHEW
SMT.N.SINDHU

RESPONDENTS: PETITIONER & RESPONDENTS 3 TO 6:
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1. SANJAI GEORGE, S/O.ALEXANDER PHILIP,
AYOORKUZHYIL HOUSE, ALLAPRA, VENGOLA.

2. THE NATIONAL INSURANCE COMAPNY LTD.,
P.B.NO.24, MULLAPPILLY BUILDINGS, A.M.ROAD,
PERUMBAVOOR.

3. REGINS ISSAC, S/O. ISSAC,
THAMBRA HOUSE, ALLAPRA, VENGOLA VILLAGE.

4. M.J. MUSTHAFA, S/O. JINNA,
K/4900, KODASSERI HOUSE, NEAR PALLAVI RECORDING
CENTRE, NADUVATHU P.O., NADAKKAVU, CALICUT.

5. NEW INDIA ASSURANCE COMPANY,
BRANCH OFFICE, 1ST FLOOR, VARIKODAN BUILDINGS,
NILAMBU ROAD, MANJERI-676 121.

BY ADV. SRI.P.JAYASANKAR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No. 106 of 2007

Dated this the 2nd July, 2007.

J U D G M E N T

Heard the learned counsel appearing for the appellants. Advocate Sri.Jayasankar, the learned Standing Counsel, appeared for the second respondent, Insurer. Respondents 1 and 3 to 5 were removed from the party array, as per the order in I.A.NO. 113/2007, dated 17.1.2007.

2. The first respondent herein met with an accident on 12.10.1997. He filed O.P.(M.V) No.783 of 1998, on the file of the Motor Accidents Claims, Tribunal, Perumbavoor, impleading the appellants, owner and driver of a mini lorry bearing Registration No.KL-7H-7162 and two insurance companies. But the appellants did not appear and contest the matter.

3. The appellants are the owner and driver of a Mini Lorry bearing Registration No. KL-7H-7162. This appeal is filed against an order passed by the Tribunal directing the second respondent, Insurer of the vehicle, owned by the second appellant to

pay the compensation to the first respondent, who sustained injuries in a motor vehicle accident, and to recover the same from the first appellant.

4. The brief facts necessary for the disposal of the appeal are as follows. The first respondent was a pillion rider in a motor cycle bearing Registration No.KL-7-13-4414 . On 12.10.1997, at about 11.10 a.m., the accident took place, involving the motor cycle and the mini lorry owned by the second appellant, in which, the first respondent sustained injuries. He filed claim petition impleading the appellants, 2nd respondent Insurer and respondents 3 to 5, who are the owner, driver and insurer of the motor vehicle. The Tribunal found that the accident occurred due to the negligence of the first appellant, driver of the lorry. It was also found that the first respondent was entitled to get an amount of Rs.16,150/= with 9% interest. But, in view of the contentions raised by the second respondent, Insurer, that the first respondent was not in possession of a valid driving licence, the Tribunal directed the second respondent, Insurer, to pay the amount, and recover the same from the appellants. When revenue

recovery proceedings were initiated against the appellants, they have filed this appeal, with a delay of more than 1000 days. The delay was condoned and the appeal admitted.

5. Appellants raised a contention that the first appellant was holding a driving licence on the date of accident. He produced a photo copy of the same along with the appeal memorandum. Further, the first appellant produced the original driving licence for verification. I have gone through the driving licence. It shows that the first appellant was holding a valid driving licence to drove the goods vehicle on the date of accident.

6. The learned counsel Standing Counsel appearing for the second respondent, Insurer, submits that no reason was stated by the appellants for not producing this document, and if at all, this Court finds that that is a relevant evidence, the matter has to be remanded to the Trial Court, so as to give both sides an opportunity to adduce further evidence.

7. The only reason stated by the Tribunal for fastening the liability is that the first appellant did not produce the driving licence. Since I have verified the original driving licence, I do not find

any reason to remand this old matter back to the Tribunal. I have carefully gone through the award passed by the court below. I do not find any reason to interfere with the finding of the Tribunal that the accident occurred due to the negligence of the first appellant. I also do not find any reason to interfere with the findings that the first respondent is entitled to get an amount of Rs.16,150/= as compensation. It is also to be noted that there is no challenge against these findings.

8. In view of the fresh evidence produced before this Court, I am of the considered opinion that the direction of the Tribunal to recover the amount of compensation from the appellants is to be set aside.

In the result, appeal is allowed in part. The permission given by the Tribunal to the Insurer to recover the compensation from the appellants is set aside. No cost.

K.PADMANABHAN NAIR,
JUDGE

nj.